

**Executive Summary – Enforcement Matter – Case No. 45846**  
**H & S CONSTRUCTORS, INC.**  
**RN106543762**  
**Docket No. 2012-2703-MLM-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

MLM - AIR, PST, MSW

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

H & S Pipeline, 370 Farm-to-Market Road 190, Asherton, Dimmit County

**Type of Operation:**

Heavy construction facility

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** April 5, 2013

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$11,500

**Amount Deferred for Expedited Settlement:** \$2,300

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$9,200

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**SEP Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - Unclassified

Site/RN - N/A

**Major Source:** Air/PST: No; Waste Tires: Yes; Used Oil Filter: No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2011

**Executive Summary – Enforcement Matter – Case No. 45846**  
**H & S CONSTRUCTORS, INC.**  
**RN106543762**  
**Docket No. 2012-2703-MLM-E**

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** October 10, 2012

**Date(s) of NOE(s):** November 16, 2012

***Violation Information***

1. Failed to obtain authorization to construct and operate a source of air emissions. Specifically, Respondent failed to obtain permit authorization prior to the construction and operation of dry abrasive and surface coating facilities [30 TEX. ADMIN. CODE § 116.110(a) and TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b)].
2. Failed to submit an aboveground storage tank ("AST") registration within 30 days from the date petroleum product was first placed into the tank. Specifically, Respondent did not register with the TCEQ an AST 30 days from the date product was placed into the tank on July 10, 2012 [30 TEX. ADMIN. CODE § 334.127(c) and TEX. WATER CODE § 26.346].
3. Failed to obtain a scrap tire storage site registration for the Facility prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in enclosed and lockable containers. Specifically, approximately 1,250 scrap tires were observed on the ground [30 TEX. ADMIN. CODE § 328.60(a)].
4. Failed to demonstrate transfer of custody of used oil filters from the transporter to the registered storage facility or processor using properly completed bills of lading ("BOLs"). Specifically, copies of BOLs were not made available for inspection by agency personnel [30 TEX. ADMIN. CODE § 328.25(a) and TEX. HEALTH & SAFETY CODE § 371.105].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

The Order will require Respondent to:

- a. Immediately, cease disposing of any additional scrap tires at the Facility; and,
- b. Within 15 days, submit an administratively complete registration for a Permit by Rule.

**Executive Summary – Enforcement Matter – Case No. 45846**  
**H & S CONSTRUCTORS, INC.**  
**RN106543762**  
**Docket No. 2012-2703-MLM-E**

c. Within 30 days:

- i. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning permit application within 30 days after the date of such requests, or by any other deadline specified in writing;
- ii. Reduce and maintain the number of scrap tires being stored on-site to 500 or less on the ground and/or 2,000 or less in enclosed and lockable containers; or
- iii. Obtain a scrap tire storage site registration;
- iv. Complete and submit used oil filter BOLs; and
- v. Submit a registration for the AST.

d. Within 45 days, submit written certification demonstrating compliance with Ordering Provisions a. through c.

***Litigation Information***

**Date Petition(s) Filed:** N/A  
**Date Answer(s) Filed:** N/A  
**SOAH Referral Date:** N/A  
**Hearing Date(s):** N/A  
**Settlement Date:** N/A

***Contact Information***

**TCEQ Attorney:** N/A  
**TCEQ Enforcement Coordinator:** Andrea Park, Enforcement Division,  
Enforcement Team 6, MC R-12, (713) 422-8970; Debra Barber, Enforcement Division,  
MC 219, (512) 239-0412  
**TCEQ SEP Coordinator:** N/A  
**Respondent:** B.K. Trawick, Safety & HR Manager, H & S CONSTRUCTORS, INC.,  
P.O. Box 9014, Corpus Christi, Texas 78469-9014  
Michael Scott, Director, H & S CONSTRUCTORS, INC., P.O. Box 9014, Corpus Christi,  
Texas 78469-9014  
**Respondent'**





# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	19-Nov-2012	<b>Screening</b>	9-Dec-2012	<b>EPA Due</b>	
	<b>PCW</b>	9-Dec-2012				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	H & S CONSTRUCTORS, INC.		
<b>Reg. Ent. Ref. No.</b>	RN106543762		
<b>Facility/Site Region</b>	16-Laredo	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	45846	<b>No. of Violations</b>	2
<b>Docket No.</b>	2012-2703-MLM-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Air & Petroleum Storage Tank	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>	Waste Tires & Used Oil Filter	<b>Enf. Coordinator</b>	Andrea Park
		<b>EC's Team</b>	Enforcement Team 6
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$3,750**

## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** **0.0%** Enhancement **Subtotals 2, 3, & 7** **\$0**

Notes: No adjustment for compliance history.

**Culpability** **No** **0.0%** Enhancement **Subtotal 4** **\$0**

Notes: The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5** **\$0**

**Economic Benefit** **0.0%** Enhancement\* **Subtotal 6** **\$0**

Total EB Amounts: \$213  
Approx. Cost of Compliance: \$5,100  
\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$3,750**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **0.0%** **Adjustment** **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount** **\$3,750**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$3,750**

**DEFERRAL** **20.0%** Reduction **Adjustment** **-\$750**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

**PAYABLE PENALTY** **\$3,000**

Screening Date 9-Dec-2012

Docket No. 2012-2703-MLM-E

PCW

Respondent H &amp; S CONSTRUCTORS, INC.

Policy Revision 3 (September 2011)

Case ID No. 45846

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106543762

Media [Statute] Air &amp; Petroleum Storage Tank

Enf. Coordinator Andrea Park

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

## &gt;&gt; Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Unclassified

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

No adjustment for compliance history.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, &amp; 7) 0%

## &gt;&gt; Final Compliance History Adjustment

Final Adjustment Percentage \*capped at 100% 0%

Screening Date 9-Dec-2012

Docket No. 2012-2703-MLM-E

PCW

Respondent H &amp; S CONSTRUCTORS, INC.

Policy Revision 3 (September 2011)

Case ID No. 45846

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106543762

Media [Statute] Air &amp; Petroleum Storage Tank

Enf. Coordinator Andrea Park

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 116.110(a) and Tex. Health &amp; Safety Code §§ 382.0518(a) and 382.085(b)

## Violation Description

Failed to obtain authorization to construct and operate a source of air emissions. Specifically, the Respondent failed to obtain permit authorization prior to the construction and operation of dry abrasive and surface coating facilities.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

## Violation Events

Number of Violation Events 2

60 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

Two quarterly events (one event for each authorization) are recommended from the October 10, 2012 investigation to the December 9, 2012 screening date.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$2,500

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$208

Violation Final Penalty Total \$2,500

This violation Final Assessed Penalty (adjusted for limits) \$2,500

# Economic Benefit Worksheet

**Respondent** H & S CONSTRUCTORS, INC.

**Case ID No.** 45846

**Reg. Ent. Reference No.** RN106543762

**Media** Air & Petroleum Storage Tank

**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$5,000	10-Oct-2012	9-Aug-2013	0.83	\$208	n/a	\$208
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs**

Estimated cost to obtain permit authorization. The date required is the investigation date, and the final date is the estimated date of compliance.

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**

\$5,000

**TOTAL**

\$208



Screening Date 9-Dec-2012

Docket No. 2012-2703-MLM-E

PCW

Respondent H &amp; S CONSTRUCTORS, INC.

Policy Revision 3 (September 2011)

Case ID No. 45846

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106543762

Media [Statute] Air &amp; Petroleum Storage Tank

Enf. Coordinator Andrea Park

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 334.127(c) and Tex. Water Code § 26.346

Violation Description

Failed to submit an aboveground storage tank ("AST") registration within 30 days from the date petroleum product was first placed into the tank. Specifically, the Respondent did not register with the TCEQ an AST 30 days from the date product was placed into the tank on July 10, 2012.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Major	Harm Moderate	Minor
Actual			
Potential			

Percent 0.0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix  
Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

## Violation Events

Number of Violation Events 1

92 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$1,250

One single event is recommended based on documentation of the violation on October 10, 2012.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,250

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$5

Violation Final Penalty Total \$1,250

This violation Final Assessed Penalty (adjusted for limits) \$1,250

# Economic Benefit Worksheet

**Respondent** H & S CONSTRUCTORS, INC.  
**Case ID No.** 45846  
**Reg. Ent. Reference No.** RN106543762  
**Media** Air & Petroleum Storage Tank  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

**Item Cost** **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**  
**Item Description** No commas or \$

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	9-Aug-2012	9-Aug-2013	1.00	\$5	n/a	\$5

## Notes for DELAYED costs

Estimated cost to accurately prepare and submit an AST registration. The date required is the registration due date, and the final date is the estimated date of compliance.

## Avoided Costs

### ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

## Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$5



# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

<b>DATES</b>	<b>Assigned</b>	19-Nov-2012	<b>Screening</b>	9-Dec-2012	<b>EPA Due</b>	
	<b>PCW</b>	9-Dec-2012				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	H & S CONSTRUCTORS, INC.		
<b>Reg. Ent. Ref. No.</b>	RN106543762		
<b>Facility/Site Region</b>	16-Laredo	<b>Major/Minor Source</b>	Major

## CASE INFORMATION

<b>Enf./Case ID No.</b>	45846	<b>No. of Violations</b>	1
<b>Docket No.</b>	2012-2703-MLM-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Waste Tires	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>	Air, Petroleum Storage Tank, Used Oil Filter	<b>Enf. Coordinator</b>	Andrea Park
		<b>EC's Team</b>	Enforcement Team 6
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$7,500**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** **0.0%** Enhancement **Subtotals 2, 3, & 7** **\$0**

Notes: No adjustment for compliance history.

**Culpability** **No** **0.0%** Enhancement **Subtotal 4** **\$0**

Notes: The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5** **\$0**

**Economic Benefit** **0.0%** Enhancement\* **Subtotal 6** **\$0**

Total EB Amounts \$415  
Approx. Cost of Compliance \$10,000  
\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$7,500**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **0.0%** **Adjustment** **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount** **\$7,500**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$7,500**

**DEFERRAL** **20.0%** Reduction **Adjustment** **-\$1,500**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

**PAYABLE PENALTY** **\$6,000**

Screening Date 9-Dec-2012

Docket No. 2012-2703-MLM-E

PCW

Respondent H &amp; S CONSTRUCTORS, INC.

Policy Revision 3 (September 2011)

Case ID No. 45846

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106543762

Media [Statute] Waste Tires

Enf. Coordinator Andrea Park

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

## &gt;&gt; Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Unclassified

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

No adjustment for compliance history.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, &amp; 7) 0%

## &gt;&gt; Final Compliance History Adjustment

Final Adjustment Percentage \*capped at 100% 0%

Screening Date 9-Dec-2012

Docket No. 2012-2703-MLM-E

PCW

Respondent H &amp; S CONSTRUCTORS, INC.

Policy Revision 3 (September 2011)

Case ID No. 45846

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106543762

Media [Statute] Waste Tires

Enf. Coordinator Andrea Park

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 328.60(a)

Violation Description

Failed to obtain a scrap tire storage site registration for the Facility prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in enclosed and lockable containers. Specifically, approximately 1,250 scrap tires were observed on the ground.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 15.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$21,250

\$3,750

## Violation Events

Number of Violation Events 2

60 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$7,500

Two monthly events are recommended based on documentation of the violation during the October 10, 2012 investigation to the December 9, 2012 screening date.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$7,500

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$415

Violation Final Penalty Total \$7,500

This violation Final Assessed Penalty (adjusted for limits) \$7,500

## Economic Benefit Worksheet

**Respondent** H & S CONSTRUCTORS, INC.

**Case ID No.** 45846

**Reg. Ent. Reference No.** RN106543762

**Media** Waste Tires

**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$10,000	10-Oct-2012	9-Aug-2013	0.83	\$415	n/a	\$415
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs**

Estimated cost to register the Facility as a scrap tire storage facility. The date required is the date of the investigation, and the final date is the expected date of compliance.

### Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**

\$10,000

**TOTAL**

\$415



# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	19-Nov-2012	<b>Screening</b>	9-Dec-2012	<b>EPA Due</b>	
	<b>PCW</b>	9-Dec-2012				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	H & S CONSTRUCTORS, INC.		
<b>Reg. Ent. Ref. No.</b>	RN106543762		
<b>Facility/Site Region</b>	16-Laredo	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	45846	<b>No. of Violations</b>	1
<b>Docket No.</b>	2012-2703-MLM-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Used Oil Filter	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>	Waste Tires, Petroleum Storage Tank, Air	<b>Enf. Coordinator</b>	Andrea Park
		<b>EC's Team</b>	Enforcement Team 6
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$5,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$250**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** **0.0%** Enhancement **Subtotals 2, 3, & 7** **\$0**

Notes: No adjustment for compliance history.

**Culpability** **No** **0.0%** Enhancement **Subtotal 4** **\$0**

Notes: The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5** **\$0**

**Economic Benefit** **0.0%** Enhancement\* **Subtotal 6** **\$0**

Total EB Amounts: \$8  
Approx. Cost of Compliance: \$200  
\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$250**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **0.0%** **Adjustment** **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount** **\$250**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$250**

**DEFERRAL** **20.0%** Reduction **Adjustment** **-\$50**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

**PAYABLE PENALTY** **\$200**

Screening Date 9-Dec-2012

Docket No. 2012-2703-MLM-E

PCW

Respondent H &amp; S CONSTRUCTORS, INC.

Policy Revision 3 (September 2011)

Case ID No. 45846

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106543762

Media [Statute] Used Oil Filter

Enf. Coordinator Andrea Park

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

## &gt;&gt; Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Unclassified

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

No adjustment for compliance history.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, &amp; 7) 0%

## &gt;&gt; Final Compliance History Adjustment

Final Adjustment Percentage \*capped at 100% 0%



Screening Date 9-Dec-2012

Docket No. 2012-2703-MLM-E

PCW

Respondent H &amp; S CONSTRUCTORS, INC.

Policy Revision 3 (September 2011)

Case ID No. 45846

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106543762

Media [Statute] Used Oil Filter

Enf. Coordinator Andrea Park

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 328.25(a) and Tex. Health &amp; Safety Code § 371.105

Violation Description

Failed to demonstrate transfer of custody of used oil filters from the transporter to the registered storage facility or processor using properly completed bills of lading ("BOLs"). Specifically, copies of BOLs were not made available for inspection by agency personnel.

Base Penalty \$5,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$4,750

\$250

## Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$250

One single event is recommended.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$250

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$8

Violation Final Penalty Total \$250

This violation Final Assessed Penalty (adjusted for limits) \$250

# Economic Benefit Worksheet

**Respondent** H & S CONSTRUCTORS, INC.

**Case ID No.** 45846

**Reg. Ent. Reference No.** RN106543762

**Media** Used Oil Filter

**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

**Item Cost** **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**

**Item Description** No commas or \$

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$200	10-Oct-2012	9-Aug-2013	0.83	\$8	n/a	\$8
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs**

Estimated cost to submit properly completed BOLs and to develop and implement procedures to ensure the BOLs are completed. The date required is the date of the investigation, and the final date is the expected date of compliance.

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal			0.00	\$0	\$0	\$0
Personnel			0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling			0.00	\$0	\$0	\$0
Supplies/equipment			0.00	\$0	\$0	\$0
Financial Assurance [2]			0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]			0.00	\$0	\$0	\$0
Other (as needed)			0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**

\$200

**TOTAL**

\$8



# Compliance History Report

**PUBLISHED** Compliance History Report for CN601038177, RN106543762, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

**Customer, Respondent, or Owner/Operator:** CN601038177, H & S CONSTRUCTORS, INC. **Classification:** UNCLASSIFIED **Rating:** -----

**Regulated Entity:** RN106543762, H & S PIPELINE **Classification:** NOT APPLICABLE **Rating:** N/A

**Complexity Points:** N/A **Repeat Violator:** N/A

**CH Group:** 14 - Other

**Location:** 370 FM RD 190 DIMMIT, TX, DIMMIT COUNTY

**TCEQ Region:** REGION 16 - LAREDO

**ID Number(s):**  
**AIR NEW SOURCE PERMITS** REGISTRATION 106779

**Compliance History Period:** September 01, 2007 to August 31, 2012 **Rating Year:** 2012 **Rating Date:** 09/01/2012

**Date Compliance History Report Prepared:** January 02, 2013

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** January 02, 2008 to January 02, 2013

**TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.**

**Name:** Andrea Park **Phone:** (713) 422-8970

## Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? NO
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If YES for #2, who is the current owner/operator? N/A
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If YES, when did the change(s) in owner or operator occur? N/A

## Components (Multimedia) for the Site Are Listed in Sections A - J

**A. Final Orders, court judgments, and consent decrees:**  
N/A

**B. Criminal convictions:**  
N/A

**C. Chronic excessive emissions events:**  
N/A

**D. The approval dates of investigations (CCEDS Inv. Track. No.):**  
N/A

**E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):**

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

**F. Environmental audits:**  
N/A

**G. Type of environmental management systems (EMSs):**

N/A

**H. Voluntary on-site compliance assessment dates:**

N/A

**I. Participation in a voluntary pollution reduction program:**

N/A

**J. Early compliance:**

N/A

**Sites Outside of Texas:**

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
H & S CONSTRUCTORS, INC.  
RN106543762**

**§ BEFORE THE  
§  
§ TEXAS COMMISSION ON  
§  
§ ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2012-2703-MLM-E**

### **I. JURISDICTION AND STIPULATIONS**

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding H & S CONSTRUCTORS, INC. ("Respondent") under the authority of TEX. HEALTH & SAFETY CODE chs. 382, 361, and 371 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a heavy construction facility at 370 Farm-to-Market Road 190 in Asherton, Dimmit County, Texas (the "Facility").
2. The Facility consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12). The Facility involves or involved the management of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361. The Facility involves or involved the management of used oil as defined in TEX. HEALTH & SAFETY CODE ch. 371. The Respondent's one aboveground storage tank ("AST") is not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about November 21, 2012.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Eleven Thousand Five Hundred Dollars (\$11,500) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Nine Thousand Two Hundred Dollars (\$9,200) of the administrative penalty and Two Thousand Three Hundred Dollars (\$2,300) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to obtain authorization to construct and operate a source of air emissions, in violation of 30 TEX. ADMIN. CODE § 116.110(a) and TEX. HEALTH & SAFETY CODE §§ 382.0518(a) and 382.085(b), as documented during an investigation conducted on October 10, 2012. Specifically, the Respondent failed to obtain permit authorization prior to the construction and operation of dry abrasive and surface coating facilities.
2. Failed to submit an AST registration within 30 days from the date petroleum product was first placed into the tank, in violation of 30 TEX. ADMIN. CODE § 334.127(c) and TEX. WATER CODE § 26.346, as documented during an investigation conducted on October 10, 2012. Specifically, the Respondent did not register with the TCEQ an AST 30 days from the date product was placed into the tank on July 10, 2012.
3. Failed to obtain a scrap tire storage site registration for the Facility prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in enclosed and lockable containers, in violation of 30 TEX. ADMIN. CODE § 328.60(a), as documented

during an investigation conducted on October 10, 2012. Specifically, approximately 1,250 scrap tires were observed on the ground.

4. Failed to demonstrate transfer of custody of used oil filters from the transporter to the registered storage facility or processor using properly completed bills of lading ("BOLs"), in violation of 30 TEX. ADMIN. CODE § 328.25(a) and TEX. HEALTH & SAFETY CODE § 371.105, as documented during an investigation conducted on October 10, 2012. Specifically, copies of BOLs were not made available for inspection by agency personnel.

### **III. DENIALS**

The Respondent generally denies each allegation in Section II ("Allegations").

### **IV. ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: H & S CONSTRUCTORS, INC., Docket No. 2012-2703-MLM-E" to:

Financial Administration Division, Revenue Operations Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:

- a. Immediately upon the effective date of this Agreed Order, cease disposing of any additional scrap tires at the Facility; and
- b. Within 15 days after the effective date of this Agreed Order, submit an administratively complete registration for a Permit by Rule in accordance with 30 TEX. ADMIN. CODE ch. 106 to:

Air Permits Division, MC 162  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

- c. Within 30 days after the effective date of this Agreed Order:

- i. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning permit application within 30 days after the date of such requests, or by any other deadline specified in writing;
- ii. Reduce and maintain the number of scrap tires being stored on-site to 500 or less on the ground and/or 2,000 or less in enclosed and lockable containers, in accordance with 30 TEX. ADMIN. CODE §§ 328.56 and 328.60; or
- iii. Obtain a scrap tire storage site registration, in accordance with 30 TEX. ADMIN. CODE § 328.60; and
- iv. Complete and submit used oil filter BOLs, in accordance with 30 TEX. ADMIN. CODE § 328.25(a) to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Waste Section Manager  
Laredo Regional Office  
Texas Commission on Environmental Quality  
707 East Calton Road, Suite 304  
Laredo, Texas 78041-3887

- v. Submit a registration for the AST, in accordance with 30 TEX. ADMIN. CODE § 334.127 to:

Permitting and Reporting Sections  
Permitting & Remediation Support Division, MC 138  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

- d. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.c. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and



complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Waste Section Manager  
Laredo Regional Office  
Texas Commission on Environmental Quality  
707 East Calton Road, Suite 304  
Laredo, Texas 78041-3887

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or

otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

*Pam J. Power*  
For the Executive Director

6/4/13  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

*[Signature]*  
Signature

01/21/13  
Date

B.K. TRAWICK  
Name (Printed or typed)  
Authorized Representative of  
H & S CONSTRUCTORS, INC.

SAFETY & HR MGR.  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Agreed Order.